

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**TRANSCENDENCE TRANSIT II, INC.;
TRANSCENDENCE TRANSIT, INC.;
PATRIARCH PARTNERS, LLC AND
PATRIARCH PARTNERS AGENCY SERVICES;
Single Employers or Joint Employers**

And

Case 29-CA-182049

**LOCAL 1181-1061, AMALGAMATED TRANSIT
UNION, AFL-CIO**

**GENERAL COUNSEL’S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE’S DECISION**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel files the following exceptions to the Decision of Administrative Law Judge Kenneth W. Chu, which issued on September 4, 2019.

Exception Number	Page	Line	Exception
1.	5	6-7	Finding, contrary to record evidence, that PPAS acted on behalf of Wells Fargo.
2.	5	36-37	Finding, contrary to record evidence, that PPAS was the administrative agent of Wells Fargo.
3.	6	24-25	Incorrectly recounting Tilton’s testimony regarding the number of jobs that could be preserved if the MTA contract was assigned to Transcendence II.
4.	6	31	Finding, contrary to record evidence, that the foreclosure sale and transfer of assets never went through.
5.	6	35	Misconstruing the record to conclude that TransCare’s filing for bankruptcy was the result of TransCare NY’s purported failure to assign the foreclosed assets including MTA contract for Transcendence II.

6.	8	17-18	Finding, contrary to record evidence, that Jones testified that the Employee Announcement should never have been distributed.
7.	10	45-46	Finding, contrary to record evidence, that Union representative Cordiello testified that during a telephone conversation on February 26, MTA representative Charles advised Cordiello that <i>TransCare</i> was closing and vehicles would be locked down—rather than <i>Transcendence</i> was out of business.
8.	12	13-15	Finding, contrary to record evidence, that Trustee LaMonica instructed that the paratransit vehicles be returned to the Foster Avenue facility.
9.	13	33	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and failing to apply relevant Board law in finding that Transcendence II is not a successor to TransCare NY.
10.	13	37-40	Mischaracterizing the Complaint allegations and Counsel for the General Counsel’s arguments regarding when Respondents began operating the business of TransCare NY as Transcendence II.
11.	14	24-25	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and failing to apply relevant Board law in finding that Transcendence II is not a successor to TransCare NY.
12.	14	27-29	Ignoring record evidence, substituting personal speculation for record evidence, and failing to apply relevant Board law in finding there was no substantial continuity of operations after the takeover and that Transcendence II never hired a majority of the predecessor’s (TransCare NY) employees.
13.	14	31	Ignoring record evidence in finding that Transcendence II never began operating.
14.	14	35-36	Ignoring record evidence in finding that Transcendence II’s takeover of TransCare NY’s paratransit operations was unsuccessful.
15.	14	41-43	Finding, contrary to record evidence, that LaMonica credibly testified that he would not release the server to Transcendence President Youngblood or any other TransCare official because the server was deemed as a valuable asset for bankruptcy purposes and that this is not disputed.

16.	14-15	46-47; 1	Finding, contrary to record evidence, that the bill of sale, agreement to pay and transfer statement dated February 24 was never executed by the parties and that the Trustee objected to the sale and transfer of TransCare assets .
17.	15	4-5	Finding, contrary to the law and record evidence that that the two most significant assets for Transcendence II could not be transferred without the consent of the bankruptcy Trustee and the MTA
18.	15	7-8	Finding, contrary to record evidence and relying on personal speculation, that Transcendence II was not operating at any given time.
19.	15	8-10	Improperly crediting Patriarch Attorney Stephen's testimony that he poorly drafted his February 26, 2016 email, with no consideration of witnesses' demeanor, and conflicting and contradictory record evidence.
20.	15	14-16	Finding, contrary to record evidence and relying on personal speculation, that Transcendence II could be up and running the para-transit operations but only if certain accommodations (conditions) could be reached, namely, the contract approval by the MTA.
21.	15	18-22	Finding without any support of record evidence, that PPAS attorney Creswell February 25 and 26 admissions that Transcendence II was already operating the para-transit business were overstatements.
22.	15	22-24	Finding, contrary to record evidence, that PPAS attorney Creswell did not speak on behalf of the Respondents.
23.	15	28-37	Improperly crediting Tilton's testimony as to an erroneous legal conclusion, i.e. that breaches of contacts render contracts null and void.
24.	15	28-37	Improperly crediting Tilton's testimony, with no consideration of witnesses' demeanor, and conflicting and contradictory record evidence.
25.	15	39-42	Finding, contrary to record evidence, and by relying on his own personal speculation, that Transcendence II could not operate the paratransit business unless it was under contract with the MTA and that it would not make business sense for Transcendence II to operate the paratransit business.

26.	16	5-6	Finding, contrary to record evidence, that paratransit contract was not assigned to Transcendence II as a result of the MTA's refusal to go forward with the transfer of the contract.
27.	16	10-11	Finding, contrary to record evidence, that no work was done by Transcendence II.
28.	16	13-14	Finding, contrary to record evidence, that all the work done on February 24, 25, and 26 was done by TransCare NY.
29.	16	16-17	Finding, contrary to record evidence, that the Counsel for the General Counsel failed to show that Transcendence II had hired a majority of the predecessor's employees.
30.	16	17-19	Finding, contrary to record evidence, that Patriarch representative Jones and Patriarch Attorney Stephen credibly testified that the Employee Announcement notifying the employees that their jobs were being transferred to a new company was only a draft and that this testimony was corroborated by the objective evidence in the record.
31.	16	22-23	Finding, contrary to record evidence, that that distribution of the Employee Announcement to employee was "leakage" rather than authorized communication directed by Patriarch representatives and that the Employee Announcement was distributed in anticipation of job transfer that never occurred.
32.	16	23-24	Finding, contrary to record evidence, and relying upon his own speculation that the Employee Announcement would not have gone out to the employees in a format that included the wrong date.
33.	16	27-28	Finding, contrary to record evidence, that employment offers to the TransCare NY employees, i.e. transfer of employment letters, were never given and never acknowledged by any employees.
34.	16	33-35	Finding, contrary to record evidence, and relying upon his own speculation that none of the paratransit employees should have been under the impression that they were working for Transcendence II on February 24, 25, and 26.
35.	16	33-35	Misconstruing and misapplying Board law by speculating about and substituting his own conjecture for what he believed employees should have thought as to which entity they were working for in order to find that Transcendence II was not a

			successor.
36.	16	36-38	Finding, contrary to record evidence, that the transfer of employment letters were not distributed to para-transit employees.
37.	16	38-40	Misconstruing and misapplying Board law by considering the subjective understanding of employees as to which entity they were working for in order to find that Transcendence II was not a successor.
38.	16	42-44	Finding, without any support of record evidence, that paratransit driver Dockery finished her tour on Friday and believed she was employed by TransCare NY.
39.	17	2-3	Finding, contrary to record evidence, that Cordiello testified that on February 24, Fuchs advised Cordiello that the job offers to paratransit employees had not yet transferred to Transcendence II.
40.	17	4-6	Finding, contrary to record evidence, that Fuchs believed that TransCare NY was still operating until the afternoon of February 26.
41.	17	8	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and failing to apply relevant Board law in finding that Transcendence II is not a successor to TransCare NY.
42.	17	Fn. 13	Finding, contrary to record evidence, that TransCare continued operations of the paratransit business after the filing of the bankruptcy petition.
43.	17	8-10	Improperly crediting testimony of Tilton, Stephen, and Jones in their descriptions on the limited corporate responsibilities of Patriarch towards Transcendence and Transcendence II in governing the essential terms and conditions of employment with no consideration of witnesses' demeanor, and conflicting and contradictory record evidence.
44.	17	15-17	Finding, contrary to record evidence, that below the executive level, there has been no testimony or evidence that Patriarch was involved in the hiring, retention, or removal of rank-and-file employees.

45.	17	17-18	Finding, contrary to record evidence, that Patriarch did not establish the rates of pay for Transcendence II’s employees.
46.	17	19-20	Finding, contrary to record evidence, that Patriarch did not determine the number of employees necessary for paratransit work.
47.	17	27-28	Finding, contrary to record evidence, that there is no evidence that Patriarch would have codetermined or imposed any specific conditions on the employees of Transcendence II.
48.	21	31-33	Finding, contrary to record evidence, that Patriarch treated TransCare NY in similar fashion to the Transcendence companies and every other company in Tilton’s portfolio.
49.	21	31-33	The ALJ committed prejudicial error by not allowing Counsel for the General Counsel to solicit evidence related to whether Patriarch’s control and involvement in the operations of Transcendence and Transcendence II were similar to that of every other company in Tilton’s portfolio and subsequently finding that that Patriarch treated TransCare NY in similar fashion to the Transcendence companies and every other company in Tilton’s portfolio.
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50.	21	37-38	Finding, contrary to record evidence, that there is no evidence that Patriarch governed the essential terms and conditions of TransCare NY employees.
51.	21	43-44	Finding, contrary to record evidence, that Patriarch never directed Transcendence II’s employees’ task assignments or provided instructions regarding the execution of such tasks.
52.	21	44	Finding, contrary to record evidence, that Patriarch never hired or fired employees of Transcendence II.
53.	22	14	Finding, contrary to record evidence, that Patriarch hired an independent executive team for Transcendence and Transcendence II.
54.	22	18-20	Finding, contrary to record evidence, that Respondents never imposed, shared or codetermined directly or indirectly, any matter over the essential terms and conditions of employment of the statutory employees.
55.	23	9-10	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and misapplying Board law in finding that Respondents are not a

			single employer with Transcendence II.
56.	23	19-23	Improperly substituting his own judgement for Board law by speculating that the Board's consideration of common ownership or financial control as a factor in establishing single-employer status would place most, if not all, investment and management funds in the inevitable position of being single employers with every company that they own or have financial control and that applying the Board's standard essentially disregards how businesses operate when ownership and financial control are by other corporate entities.
57.	23	23-24	Misapplying Board law by only considering three of the four factors considered by the Board, (1) interrelations of operations, (2) common management, and (3) centralized control of labor relations and failing to consider common ownership, thereby erroneously finding that Respondents are not a single employer with Transcendence II.
58.	23	32	Finding, contrary to record evidence, that Patriarch has no interrelations of operations with Transcendence and Transcendence II.
59.	23	33	Finding, contrary to record evidence, that the operations of each Respondent company are distinct and separate.
60.	23	37-38	Finding, contrary to record evidence, that none of the Patriarch employees were loaned to Transcendence or Transcendence II to operate para-transit services.
61.	24	3	Finding, contrary to record evidence, that there is no common management among the four companies.
62.	24	10-12	Finding, contrary to record evidence, that Youngblood and his role as President for Transcendence and Transcendence II is not evidence of common management.
63.	24	12-13	Substituting his own speculation and conjecture, without any support of record evidence, that Patriarch employees would not have managed Transcendence and Transcendence II employees and failing to give proper weight to the record evidence that Patriarch employees <i>did</i> manage Transcendence and Transcendence II employees.
64.	24	14-16	Substituting his own speculation and conjecture, without any support of record evidence, that the Transcendence entities would have had its own management team that would be

			separate and distinct from Patriarch directors and managers, and failing to give proper weight to the record evidence that Transcendence and Transcendence II manager Youngblood and Fuchs did not exercise independent managerial authority in their roles as Transcendence and Transcendence II managers, but rather, solely followed direction from Patriarch employees.
65.	24	20	Finding, contrary to record evidence, that there was no centralized control of labor relations among the Respondents.
66.	24	20-22	Substituting his own speculation and conjecture,, without any support of record evidence, that there is no evidence in the record that the labor relations functions of Transcendence and Transcendence II would have been the responsibilities of Patriarch and failing to give proper weight to the record evidence that Patriarch employees controlled labor relations functions of Transcendence and Transcendence II leading up to and during the three days that the Transcendence companies were operational.
67.	24	Fn. 17	Substituting his own speculation and conjecture, contrary to record evidence, and necessarily relying on fact not in evidence, that Tilton's role in her portfolio companies is no different with any other entrepreneur that owns or manages several companies, and substituting the ALJ's personal opinion for Board law in opining that it is unreasonable to conclude that Tilton's role would show single-employer status of companies that are managed or owned by an individual, hedge fund, or private investment fund.
68.	25	18-19	Finding, contrary to record evidence, that Patriarch did not perform payroll functions for Transcendence and Transcendence II.
69.	25	19-20	Finding, contrary to record evidence, that PPAS did not comingle funds to the benefit of Patriarch or any other companies in Tilton's portfolio.
70.	25	25	Finding, contrary to record evidence, that the bill of sale of TransCare's assets by PPAS to Transcendence was an arms-length transaction.
71.	25	25-27	Finding, contrary to record evidence, that other lenders were involved, including Wells Fargo, in the foreclosure transaction to ensure that there was proper accounting and fair value for

			TransCare's assets.
72.	25	28-30	Finding, contrary to record evidence, that all loans and financial transactions were well documented and there was nothing suspicious, such as an interest-free loan or nonpayment of a secured interest when an installment was due, to negate anything less than an arm's-length arrangement.
73.	25	32	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and misapplying Board law in finding that Respondents are not a single employer with Transcendence II.
74.	25	36-37	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and failing to apply relevant Board law in finding that Transcendence II is not a successor to TransCare NY.
75.	25	41	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and misapplying Board law in finding that Respondents are not a single employer with Transcendence II.
76.	25	43-45	Ignoring record evidence, misconstruing record evidence, substituting personal speculation for record evidence, and misapplying Board law in finding that Respondents have not failed and refused to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.
77.	25	47	Improperly recommending that the complaint be dismissed in its entirety.
78.			Failing to find that Transcendence II operated from February 24, 2016 to February 26, 2016.
79.			Failing to find that Respondents are a single employer with Transcendence II.
80.			Failing to find that Respondents, as a single employer, were a successor to TransCare NY.
81.			Failing to find that Respondents violated Sections 8(a)(1) and (5) of the Act by failing to provide the Union with notice and opportunity to bargain regarding Respondents decision to cease operations on February 26, 2016.
82.			Failing to find that limited make whole <i>Transmarine</i> remedy, as

			clarified in <i>Melody Toyota. Transmarine Navigation Corp.</i> , 170 NLRB 389 (1968); <i>Melody Toyota</i> , 325 NLRB 846 (1998) is appropriate in this case.
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Respectfully submitted,

_____/s/LyndaTooker_____
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DATED AT Brooklyn, New York October 30, 2019.